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SIPDIS

DEPARTMENT FOR WHA/CEN, WHA/PPC SMILLER, AND G/TIP BFLECK.

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TAGS: PGOV KTIP CVIS CS DR

SUBJECT: PROSECUTIONS POSSIBLE, BUT NOT LIKELY IN DOMINICAN  
PROXY MARRIAGE "TIP" CASES

Classified By: Pol/Econ Counselor David E. Henifin for reason 1.4(d).

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SUMMARY:  
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¶1. (SBU) Although local media alleged in April that 400-500 Dominican women had been trafficked into Costa Rica through proxy marriages to work in the sex trade, the story is not so straightforward. As the complicated facts have slowly emerged, it is apparent that the "victims" may have entered the country over a few years, most voluntarily to work in prostitution (which is legal in Costa Rica). There is no evidence that the women were held against their will, although they reportedly paid a ring for sham marriages and transport. Recent media reports revealed the names of a main suspect, which may jeopardize the on-going investigation. And, because Costa Rican law does not yet define internal trafficking in persons as a crime, there may be no legal basis to criminally prosecute the proxy-marriage "traffickers," even when known to police, because their "victims" entered Costa Rica legally with visas to reunite with their "husbands." This case may thus be more one of smuggling rather than TIP violations.

¶2. (SBU) In a related development, the Constitutional Court ruled in September that Costa Rican Consuls and Immigration officials can scrutinize proxy marriage cases to ascertain their bona fides. This should make it more difficult for the sham marriage industry (and traffickers who may use this legal artifice) to operate in Costa Rica. END SUMMARY.

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THE SHAM MARRIAGE SCAM  
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¶3. (SBU) According to Judicial Police (OIJ) investigators, one primary ring evidently helped a large group of Dominican women to take advantage of the proxy-marriage mechanism in order to work in prostitution in Costa Rica. "On-paper" proxy (por poder) marriages are legally recognized here. The ring helps Dominicans get into Nicaragua, and, once there, assists them in crossing the border, allegedly with cooperation of a willing Costa Rican immigration official or by other illegal means. Once in Costa Rica, an attorney "marries" the women -- via signatures only -- to drug abusers, alcoholics, indigents, and even hospitalized mental patients; any man who will accept as little as \$10-\$40 to register himself as married. The attorney promises to divorce the couples three years later, allowing time for the women to obtain Costa Rican residency.

¶4. (SBU) The women return to the Dominican Republic, submit their marriage certificates to Costa Rican Consuls, and receive visas to enter Costa Rica legally based on their marriages to Costa Rican citizens. (Only those who enter

Costa Rica legally may then petition for residency, which is the purpose of leaving and re-entering.) Upon arrival at the airport, the women are met by the ring and taken to clubs in the Central Pacific region to work. The ring finds them housing in apartments. The women sometimes take liens against their family's property to pay the ring. This scheme has been a long-running problem in Costa Rica and a particular target of Immigration Director Mario Zamora. Though other rings may possibly exist, only this one Dominican ring is currently under investigation.

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SOME, NOT MOST, MAY HAVE BEEN TRAFFICKED  
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¶15. (SBU) According to Mariliana Morales, Executive Director of the Rahab Foundation, the primary NGO involved in trafficking prevention, education and victim's assistance, the 400-500 Dominican women featured in the media did not arrive as one group or necessarily via the same trafficking ring. Rather, this figure represented the number of Dominican women over the last few years who entered Costa Rica through proxy marriages to work in the sex industry. The Rahab Foundation has worked with some Dominicans whom Morales said definitely fit the definition of trafficking victims.

¶16. (SBU) Vice Minister of Public Security Ana Duran, head of the government/nonprofit National Anti-Trafficking Coalition, originally told us that the Dominican case involved trafficking victims "by definition," including a few who were minors. In later conversations, she seemed less certain that the women involved were actually trafficking victims. She

told us that the power to prosecute the perpetrators lies with the judicial branch, which limited her role to seeking information about whether the members of the smuggling ring would be prosecuted.

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LAWS NEED TO BE CHANGED  
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¶17. (SBU) Legislative Assembly member Evita Arguedas (Ind) expressed her concerns to us about what the outdated proxy marriage law means for Costa Rican national security. She has been pushing for legislative changes, but without much support from fellow legislators. Arguedas asserted that the team of Colombians who came to Costa Rica in 2007 in an alleged attempt to assassinate then Minister of Public Security Fernando Berrocal entered Costa Rica via proxy marriages, as well. While the current law permits proxy marriages, the Constitutional Chamber of the Supreme Court ruled in September that Consuls and Immigration officials have the right to verify that the two parties to a proxy marriage actually know each other and can prove cohabitation. Vice Minister Duran believes this ruling should give Consuls the power to deny visas to women whose marriages do not seem to be legitimate.

¶18. (SBU) From time to time, the Immigration police raid nightclubs and round up dozens of women from the Dominican Republic and elsewhere to check their immigration status. According to Arguedas, the Immigration police chief knows there are organized crime rings bringing women into the country, but he does not believe the government can prosecute the rings as traffickers. Once the women enter Costa Rica legally to supposedly reunite with their husbands, it raises the question as to whether they can be technically considered to have been trafficked, since "internal" or domestic trafficking is not yet a crime here.

¶19. (SBU) Costa Rican immigration authorities tend to put more emphasis on arresting those in an illegal immigration status rather than identifying trafficking victims. One Immigration official told us that in the Dominican case, there was only one ring bringing the women to Costa Rica. Further complicating matters, according to Arguedas the

victims themselves would have to file a "denuncia" (an official complaint to police) claiming they had been forced into sexual exploitation, deprived of liberty, deceived, or were otherwise victims of trafficking.

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INSIDE THE DOMINICAN INVESTIGATION

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¶10. (C) We recently spoke to two officers in the Trafficking Unit of the Judicial Police (OIJ) who were actively investigating the Dominican case; they confirmed that one ring was involved. The ring is comprised of Dominican club owner Alejandro Ferreira, attorney Rogelio Pol Araya, and a few other (unnamed) attorneys. Francisco Ventura Portillo, an employee of Ferreira, is known to travel to the border at Penas Blancas to receive women entering from Nicaragua, with the assistance of an unidentified Immigration official. The investigators told us that they did not detect any of the most overt elements of trafficking, such as deception, deprivation of liberty, abduction, etc., and they could not confirm whether minors were involved.

¶11. (SBU) Once the women are in Costa Rica, the ring helps them find housing, and the women are required to pay their own rent. However, investigators observed them coming and going freely, suggesting that none were held against their will. Someone visits them every two weeks to collect money. According to investigators, the only pressure apparently put on the women is to repay the \$3000-\$5000 "fee" to the ring. Once that debt is repaid, the women are free to leave. Some move on to Spain after acquiring Costa Rican residency, due to the relative ease for Costa Ricans to obtain Spanish visas.

¶12. (SBU) The Dominican ring remains under investigation, and investigators are hoping to present a "trafficking" case to prosecutors on the basis of psychological pressure put on the women to pay the fee or risk losing any property against which they may have taken a lien. The prosecutor's office will then have to determine if the evidence is sufficient to charge the members of the ring for trafficking or for "simple" smuggling. At this point, the case is slated to go to the Sex Crimes prosecution unit.

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JUDICIAL (AND ATTITUDINAL) COMPLICATIONS

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¶13. (SBU) Agueda Marin of the International Organization for Migration (IOM) told us that prosecutions are complicated in Costa Rica due to the judicial codification system. When a prosecutor gets a case, he or she must decide whether to classify it as an immigration violation, a sex crime, or one of the other pre-determined categories of crimes. Without a significant understanding on the part of district prosecutors of what trafficking is, and without internal trafficking defined in the Costa Rican legal code, trafficking continues to fall through the legal cracks. The "crime" may therefore be held against the victim and not the trafficker; a trafficking victim who entered the country illegally may be deported as an illegal immigrant, with no further attention given to prosecuting the person or ring who trafficked her to Costa Rica. Rahab's Morales told us that another factor prohibiting prosecutions is the "chauvinist" mentality of many prosecutors and police who insist that women involved in sexual exploitation "like doing that" or "asked for it."

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COMMENT

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¶14. (SBU) We continue to press a variety of governmental and non-governmental agencies in Costa Rica to improve the GOCR's actions to combat trafficking in persons. One frustrating factor is the Costa Rica legal system's built in bias to protect a criminal's human rights, even at the expense of adequate prosecution or victims' protection. This is true for

crimes across the board, not just trafficking-related cases. (On a positive note, a bill to enhance victim and witness protection is making its way through the legislature.) Given the already overloaded judicial system -- which can barely investigate and prosecute homicides, robberies and drug trafficking -- plus the mixed immigration/trafficking picture in this particular case, it becomes difficult to expect TIP prosecutions to materialize from the Dominican investigation.

However, the fact that Consuls now have the authority to deny visas in proxy-marriage cases is a significant positive step that may help close one avenue for women coming to Costa Rica to be exploited sexually. We look forward to the visit of Costa Rica's G/TIP reports officer to explore this and other TIP-related issues with local officials.

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